

# STATE OF NEW YORK

2297--B

2019-2020 Regular Sessions

## IN SENATE

January 23, 2019

Introduced by Sens. KAVANAGH, BRESLIN, HOYLMAN, JACKSON, MAY, O'MARA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to enacting the student journalist free speech act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new article 18 to read as follows:

### ARTICLE 18

#### STUDENT JOURNALIST FREE SPEECH ACT

##### Section 860. Short title.

##### 861. Definitions.

##### 862. Student journalist free speech rights.

##### 863. Exemptions.

##### 864. Liability.

§ 860. Short title. This article shall be known and may be cited as the "student journalist free speech act".

§ 861. Definitions. For the purposes of this article the following terms shall have the following meanings:

1. "Educational institution" means a public high school.

2. "School-sponsored media" means any material that is prepared, written, published, or broadcast by a student journalist at an educational institution, distributed or generally made available to members of the student body, and prepared under the direction of a student media advisor. "School-sponsored media" shall not include media intended for

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 distribution or transmission solely in the classroom in which the media  
2 is produced.

3 3. "Student journalist" means a student enrolled in an educational  
4 institution who gathers, compiles, writes, edits, photographs, records,  
5 or prepares information for dissemination in school-sponsored media.

6 4. "Student media advisor" means an individual employed, appointed, or  
7 designated by an educational institution to supervise or provide  
8 instruction relating to school-sponsored media.

9 § 862. Student journalist free speech rights. 1. Except as otherwise  
10 provided in section eight hundred sixty-three of this article, a student  
11 journalist shall have the right to exercise free speech and of the press  
12 in school-sponsored media, regardless of whether the media is supported  
13 financially by the educational institution or by use of the facilities  
14 of an educational institution or produced in conjunction with a class in  
15 which the student is enrolled.

16 2. Subject to section eight hundred sixty-three of this article, the  
17 appropriate student journalist shall be responsible for determining the  
18 news, opinion, and feature content of school-sponsored media.

19 3. Nothing in this section shall preclude a student media advisor from  
20 teaching professional standards of English and journalism to student  
21 journalists or from grading the performance of a student in accordance  
22 with such standards.

23 4. There shall be no prior restraint of material prepared for official  
24 publications of an educational institution except for the material  
25 described in section eight hundred sixty-three of this article.

26 5. Educational institution administrators shall have the burden of  
27 demonstrating justification without undue delay prior to a limitation of  
28 student expression under this article.

29 6. No student media advisor or employee shall be dismissed, suspended,  
30 disciplined, reassigned, transferred, or otherwise retaliated against  
31 solely for acting to protect a pupil engaged in the conduct authorized  
32 under this article; and further no student media advisor or employee  
33 shall be dismissed, suspended, disciplined, reassigned, transferred or  
34 otherwise retaliated against solely for an action, undertaken in good  
35 faith with this article, which results in the prohibition of the publi-  
36 cation of speech pursuant to this article.

37 7. Political expression by students in school-sponsored media shall  
38 not be deemed the use of public funds for political purposes.

39 § 863. Exemptions. Nothing in this article shall impose a duty on  
40 educational institution administrators to review school-sponsored media  
41 prior to publication. To the extent that an educational institution  
42 administrator chooses to engage in pre-publication review, the follow-  
43 ing forms of expression shall not be protected by this article:

44 1. Expression that is libelous, slanderous or obscene;

45 2. Expression that constitutes an unwarranted invasion of privacy;

46 3. Expression that violates federal or state law; or

47 4. Expression that incites students to commit an unlawful act where  
48 such unlawful act would be both imminent and likely to occur, to  
49 violate the policies of the educational institution, or to materially  
50 and substantially disrupt the orderly operation of such educational  
51 institution.

52 § 864. Liability. No expression made by students in the exercise of  
53 free speech or freedom of the press protected by this article shall be  
54 deemed to be an expression of policy, opinion or position of the educa-  
55 tional institution, nor shall any such expression be considered to be an  
56 endorsement in any way by the educational institution and no educational

1 institution, student media advisor, employee, parent, legal guardian or  
2 administrator of an educational institution shall be held liable in any  
3 civil or criminal action for any expression made or published by  
4 students, except in cases of willful or wanton misconduct. Nothing in  
5 this section shall be construed to create any private action on behalf  
6 of a student other than to seek injunctive relief allowing the publica-  
7 tion of the speech in question.

8 § 2. This act shall take effect immediately.